

INSPECTOR GENERAL

498A000700150007-1

IG-75-4267

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OGC HAS REVIEWED.

18 DEC 1975

MEMORANDUM FOR: Director of Central Intelligence

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SUBJECT : OGC's Request to Reverse the [REDACTED] (POV) Decision

REFERENCES : 1) Memo for the DCI from Acting General Counsel,
dated 17 December 1975, "Waiver of Agency
Regulations"
2) Memo for the DCI from IG, dated 5 December 1975,
"Employee's Appeal for Recompense"

1. On 8 December, on my recommendation, you approved reimbursement of shipping charges on a POV for Mr. [REDACTED]. On 17 December, OGC asked you to reverse yourself. I believe you should uphold your decision of 8 December.

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2. In my letter of recommendation, OGC's position was summarized to the best of our ability. We still believe that summarization to be accurate. My recommendation was based on my view that the combination of poor administrative handling, precedent, and an overly technical legal opinion provided justification for you to use your special authority and grant redress.

3. I do not believe that OGC, in its 17 December memorandum, was responsive to my arguments. In paragraph one of that memorandum, OGC has ignored the fact that the book cable sent to the field began with the words "Guidance herein tentative..." and that the change in Agency regulations, although effective 1 January 1973, was published in January 1974. Nor, for that matter, does its memorandum note that even 1 January 1973 is after the date by which employees could have elected to ship their vehicles home at government expense.

4. In paragraph two OGC notes that in its legal opinion the car was foreign purchased. We accepted that opinion but note that it is overly technical because (1) the intent of Congress is not law and (2) the only reason the purchase did not qualify under the Uniform Commercial Code of Maryland was that the original bill of sale did not

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include the vehicle's serial number. (The car was selected and paid for in Maryland before Mr. [REDACTED] went overseas.) Mr. [REDACTED] and the dealer from whom the car was purchased said the serial numbers could have been available if anyone foresaw any conceivable need for them at that time (March 1971, when Agency policy was to ship all vehicles regardless of whether or not foreign made and foreign purchased).

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5. In paragraph three OGC states that Mr. [REDACTED] never claimed "...that he would have shipped his POV home if he had been aware of the true state of things, and specifically stated that it would have been a hardship to do so." I consider it pertinent and significant that he was denied the option.

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6. In paragraph four OGC states that your 8 December approval is either "...a retroactive change in the Agency's decision in the fall of 1972 to abide by the congressional ban, or a waiver of the regulation for an individual case." I submit that it is neither: it provides an exception, for the reasons already cited, for all those whose circumstances were the same.

7. The remainder of paragraph four is, I believe, misleading and even peculiar. I see no problem of uniform enforcement and questions of equity if all in like circumstances receive equal treatment (which, as noted, is what you approved on 8 December). As for the possibility of favoritism when exceptions are granted--that is the age-old problem of trying to be fair and even-handed and one of the reasons for the existence of an IG function. I believe that your 8 December decision, if not perfectly equitable, was more equitable than the alternative would have been or a reversal now would be.

8. Accordingly, I recommend that you uphold your decision to reimburse Mr. [REDACTED]

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[REDACTED]
Donald F. Chamberlain
Inspector General

cc: OGC
DDA

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